

1 JUDGE CHACHKIN: And you didn't make any kind of sit  
2 down like you do on page 15 with a breakdown of each bill or  
3 each invoice? You just took a rough -- made a rough  
4 assumption that you could justify half of your expenses?

5 WITNESS: Well, I had done -- all the work on page  
6 15 had been done prior because that was aggregate work. In  
7 other words, the work on page 15 represents all the legal work  
8 attributable to the five permits, so I had already done that a  
9 few weeks prior. But you're right. When it came down to the  
10 \$10,000, as I explained to Mr. Schonman earlier today, I  
11 didn't go -- then go back through each bill. I took the  
12 amount that I had worked up a few weeks prior for all of the  
13 applications and based on what I knew and my review of all the  
14 papers and so forth that's when I made the 50 percent  
15 allocation, yes, sir.

16 JUDGE CHACHKIN: Now, this page 15, you didn't  
17 prepare a similar document before coming up with the 50  
18 percent figure, did you?

19 WITNESS: No. I had a document like this --

20 JUDGE CHACHKIN: Oh, you did have a document?

21 WITNESS: -- before the November letter. See, the  
22 November letter, I was first asked just to find out what all  
23 the expenses are for it and I wrote -- on a yellow piece of  
24 paper I wrote down something very similar to this --

25 JUDGE CHACHKIN: Oh, you did --

1                   WITNESS:  -- for the CP expenses.  Yes, sir.  This  
2 was all CP.  And then a few weeks later when I got the request  
3 to give an opinion on the \$10,000 I went back and got my  
4 letter and that's when I applied the percentage, but I didn't  
5 go back --

6                   JUDGE CHACHKIN:  Well, what -- when you prepared the  
7 yellow sheet initially --

8                   WITNESS:  Yes.

9                   JUDGE CHACHKIN:  -- what information that's now on  
10 page 15 was contained on the yellow sheet?

11                  WITNESS:  Essentially this information.

12                  JUDGE CHACHKIN:  Including the percentages, 92.3  
13 percent?

14                  WITNESS:  I don't know if I put the percentages on  
15 but the numbers were there, yeah, because see I had to ratio  
16 out the expenses.

17                  JUDGE CHACHKIN:  You mean the amount allocated was  
18 put down, was in there on the yellow sheet?

19                  WITNESS:  Well, yeah.  All these -- essentially  
20 these numbers were on here, yeah.  And I think I must have put  
21 down the percentages, too.  I don't remember exactly the form,  
22 but the essential information on page 15 was on my yellow  
23 sheet.

24                  JUDGE CHACHKIN:  And this was prepared before you  
25 had the discussion with Mr. Gardner concerning the \$10,000

1 figure?

2 WITNESS: Correct.

3 JUDGE CHACHKIN: Why had you prepared --

4 WITNESS: This figure?

5 JUDGE CHACHKIN: -- this tabulation?

6 WITNESS: Okay. Well, he had first called me -- I  
7 think it was late October or early November of 1991 -- and  
8 said they had an offer or offers at that time. They were  
9 considering selling all five permits for \$30,000. So he said  
10 recap your legal fees for you and give me some advice on  
11 whether reimbursable expenses under the, you know,  
12 Commission's rules for all the permits. And that's when I  
13 prepared on a yellow piece of paper essentially the  
14 information that's on page 15.

15 JUDGE CHACHKIN: And so if the \$30,000 figure had  
16 been used then you're saying it's \$15,397.03 would have been  
17 for all the permits?

18 WITNESS: Yeah. If we'd have sold all the permits  
19 and a statement had gone in, that would have been the number  
20 for all the permits. That's exactly right, Your Honor.

21 JUDGE CHACHKIN: And then when you learned from Mr.  
22 Gardner that only one of the permits was being sold then you  
23 made a determination that 50 percent was a reasonable figure?

24 WITNESS: Well, then I -- yes, I had to make an  
25 allocation. That's right, Your Honor. When he first called

1 it was all the permits and there was no need to make a  
2 breakdown as among the permits

3 JUDGE CHACHKIN: All right. Go ahead.

4 MR. SCHONMAN: Actually I have no further questions,  
5 Your Honor.

6 JUDGE CHACHKIN: Any redirect?

7 MR. BECHTEL: Yes, sir. Thank you.

8 REDIRECT EXAMINATION

9 BY MR. BECHTEL:

10 Q I wonder if we could get the November 7th letter  
11 out. That's Exhibit -- Trinity Exhibit 232.

12 A What number, counsel?

13 Q 232.

14 A I have it.

15 Q All right. Now, my notes are that earlier on today  
16 Mr. Holt directed your attention to the paragraph on the  
17 bottom of the first page where it talks about payments of  
18 salaries of employees of the company who aren't principals,  
19 etc., and my notes are that you were asked if you relied on  
20 the integrated case for that part of the letter and your  
21 answer was, "In part." And my question to you, sir, is what  
22 was the part other than reliance on the integrated case?

23 A Well, there was another case called the Ogermier  
24 (phonetic sp.) case which is was a well known case involving  
25 the sale of construction permits and I had looked at that, and

1 | there it was quite clear in that -- in the context of the  
2 | Ogermier case that when you're selling permits that some --  
3 | that staff expenses could be included, and the whole issue in  
4 | the Ogermier case was the extent of the staff expenses, but it  
5 | was the premise that it was clear that staff expenses could  
6 | not -- could be included in the permit assignment. And when I  
7 | said in part earlier the other part of my answer was the  
8 | Ogermier case, the Review Board decision.

9 |       Q     Now, sir, direct your attention to page 15 of your  
10 | testimony here, Exhibit 325 that we've been looking at, and I  
11 | want to see if I can have you explain the genesis of such  
12 | things, percentages, as -- take a look at the August 7, 1990  
13 | entry where you have a percentage of 92.3 percent. Do you see  
14 | that?

15 |       A     Yes, sir.

16 |       Q     All right. Go, if you will, to the -- to that bill  
17 | which is page 21.

18 |       A     Yes, sir.

19 |       Q     And now just so we can have some papers to look at,  
20 | do you have Trinity's Exhibit 292 which received -- was  
21 | received today which was this --

22 |       A     I do.

23 |       Q     -- this packet of bills that also has time sheets?

24 |       A     I do.

25 |       Q     All right. And in the cross-examination by Mr.

1 Schonman we got into that \$1,300 fee figure and the amount  
2 chargeable to Middle Township registration statement, etc. If  
3 you will go to page 12 of Trinity exhibit where we have the  
4 same bill and then thereafter you will have some time sheets.  
5 I wonder if you could explain to the Court how you arrived at  
6 \$100 for the Middle Township registration statement.

7 Q Yes. Well, these are the pertinent portions of Roy  
8 Boyce's time sheets for July of 1990. If you look on page 14  
9 he had put in, "Review and filing of Middle Township  
10 registration statement," and he'd put in half-an-hour and,  
11 since we were charging \$200 an hour for Mr. Boyce's time, that  
12 was \$100. So it was clear that the cable matter, the first  
13 item on there, was \$100 and the remainder of the bill was the  
14 \$1,200 for the low power work.

15 Q Who performed the time relative to conferences with  
16 the FCC staff?

17 A I believe that was Mr. Cohen.

18 Q And did you have time records for him at the time  
19 you made these allocations?

20 A I don't recall specifically, but I do remember  
21 discussing with Mr. Cohen.

22 Q So now let's go back to page 15 of your testimony  
23 where we summarize your breakdown of the fees for this  
24 particular bill and do you see where it says \$1,200/\$1,300?

25 A What bill is this again? Oh, yes, sir.

1 Q Okay?

2 A August 7, 1990, yeah.

3 Q All right. And tell the Court what the  
4 \$1,200/\$1,300 denotes?

5 A Well, that's the \$1,200 on this bill that was  
6 attributable to the low power applications and then the \$1,300  
7 is the total amount of services on the bill which includes  
8 \$100 for the cable work, so it shows \$1,200 and \$1,300 which  
9 gives you a, a ratio there that you can use on the  
10 disbursement. We needed this ratio because we have a lot of  
11 telephone and postage and you couldn't really track it as to  
12 which particular item it was, so it seemed to me the only  
13 reasonable thing to do was to take a percentage of the  
14 disbursements that was prorated to the percentage of low power  
15 permit work that was done on the particular bill to the  
16 overall bill. That's what that is.

17 Q Well, take a look at the statement. Now we're back  
18 to page 12 of Trinity's 292. You've got disbursements there.  
19 Do you see them?

20 A Page -- yes, sir.

21 Q Now, what did you do with the filing fee on the  
22 Middle Township matter?

23 A Well, I excluded that because that filing fee  
24 related to the cable matter. It wasn't low power. So I just  
25 applied the ratio to the other -- to the remaining

1 disbursements.

2 Q And is it fair to say that the only reason you have  
3 these odd percentages on page 15 of the tabulation is you had  
4 to come up with a ratio to apply to expenses which you  
5 couldn't break down?

6 A Correct.

7 MR. BECHTEL: Now, let's stay with this exercise for  
8 just one more, Judge. I'm only -- I'm not going to take a lot  
9 of time on this.

10 BY MR. BECHTEL:

11 Q Go to the invoice right above that dated June 4,  
12 1990 where you have fees, 50 percent at \$1,600. Do you see  
13 that?

14 A Yes.

15 Q Now, if you'll go over to Trinity's 292 -- we're  
16 going to go back one. The bill itself is page 6.

17 A Yes.

18 Q And my recollection is that your explanation to Mr.  
19 Schonman was that the three cable items on the bottom came out  
20 to \$1,600 and that was half the bill.

21 A That's correct.

22 Q Okay. Would you find the time, the time sheets that  
23 you relied upon for that amount?

24 A Yes. If you'll look on page 11 of Trinity Exhibit  
25 292, these again are Mr. Boyce's time sheets and if you'll



1 | compare the items there with the last three items on the June  
2 | 4, 1990 bill as shown on Trinity Exhibit 292, page 6, you'll  
3 | see that that comes -- that the items listed -- these are all  
4 | non -- these are cable items. non-low power items, those  
5 | three, and his time there comes to 8 hours which at \$200 an  
6 | hour would be \$1,600.

7 |       Q     Now --

8 |       A     And the remainder of the \$3,200, the remaining  
9 | \$1,600, was the low power work.

10 |       Q     Now, sir, while we have these time sheets, direct  
11 | the Court's attention to the time sheets you had for the  
12 | balance of the statement.

13 |       A     You're referring to the \$3,200 statement, June 4,  
14 | 1990?

15 |       Q     I'm still on the \$3,200 statement. The cable stuff  
16 | was \$1,600?

17 |       A     Yeah. The last three --

18 |       Q     Eight hours at \$200 now. Show me the time -- show  
19 | the Court the time sheets -- the time sheet information you  
20 | had applicable to the balance of this statement.

21 |       A     Well, we certainly had the information that was on  
22 | -- that's on Trinity Exhibit 292, page 9, which is all work  
23 | performed by John Schauble, and you'll see that work reflected  
24 | on that June 4, 1990 bill. That was the bulk of the work and  
25 | then there was some additional time, I guess 2 hours and 15

1 minutes of additional time, for Mr. Cohen because he was  
2 supervising. This was the start of the compliance program.  
3 He was supervising that.

4 Q And so, in any event, in your November 7th letter  
5 you arrived at these figures for legal engineering, etc., for  
6 all five CPs, and then let us now go to the breakout that you  
7 provided to David Gardner for the Red Lion CP which is page 26  
8 of your testimony which Mr. Schonman visited a few moments  
9 ago. Do you have that?

10 A Yes.

11 Q Now, sir, both Mr. Schonman and Mr. Holt have  
12 focused on this issue of the allocation of one-third of the  
13 engineering fee rather than one-fifth of the engineering fee  
14 which would be the -- a pro rata application of that fee  
15 across the board to the five applications. My question to  
16 you, sir, is this. In your mind as you were preparing the  
17 analysis of whether you could justify \$10,000 for this  
18 particular application, how important or unimportant --  
19 describe to the Court how important or unimportant it was to  
20 your analysis that you used a one-third of the engineering  
21 fees rather than only a one-fifth?

22 (TAPE 7)

23 A It wasn't. It wasn't critical. Based on what I  
24 knew I looked at it immediately and thought one-third of the  
25 engineering and one-half of the legal plus the filing fee

1 | would be more than enough, but if for any reason the  
2 | engineering fee had been \$1,000 less under my analysis there  
3 | would have been no problem in making the allocation 55 percent  
4 | or 58 percent or 60 percent, so the precise engineering number  
5 | wasn't critical to reaching a justification for \$10,000  
6 | reimbursement.

7 | JUDGE CHACHKIN: You mean you could have increased  
8 | your allocation for legal fees?

9 | WITNESS: Yes. That's what I'm saying, sure.

10 | MR. BECHTEL: I have no further questions.

11 | JUDGE CHACHKIN: Any further questions based on  
12 | redirect?

13 | MR. HOLT: I just have a couple follow-ups, Your  
14 | Honor.

15 | JUDGE CHACHKIN: Go ahead, Mr. Holt.

16 | RECROSS-EXAMINATION

17 | BY MR. HOLT:

18 | Q If you would refer to the invoice at page 15 of your  
19 | -- I'm sorry, that's the invoice dated August 7, 1990. It's  
20 | on page 21 of your testimony.

21 | A Yes, sir.

22 | Q Were the conferences reflected here that Mr. Bechtel  
23 | just referred you to telephone conferences with the FCC staff?

24 | A No. I think Mr. Cohen was over there. I mean, he  
25 | was -- he spent a lot of time over there actually personally

1 meeting with the FCC staff to get these five low power  
2 applications granted.

3 Q To your knowledge did Mr. Cohen bring any  
4 documentation with him to those meetings?

5 A I don't know what he. I don't know what he brought  
6 to those meetings. All I know is that he was spending a lot  
7 of the time at the Commission talking to Roy Steward and  
8 Barbara Kreisman and maybe Molly Fitzgerald or whoever to get  
9 these things granted. I mean, he told me he was spending a  
10 lot of time at the Commission trying to get the Gardner  
11 applications granted.

12 Q So there wouldn't have been any telephone charges  
13 associated with, with those meetings? Correct?

14 A You mean long distance telephone?

15 Q Correct, long distance telephone charges that would  
16 be reflected in, in this bill?

17 A Oh, I'm sure there were reports to Mr. Gardner. Mr.  
18 Gardner was very interested in getting rehabilitated and  
19 getting his character re-established and getting these grants  
20 so I'm sure Mr. Cohen was keeping him informed of this, of  
21 course.

22 Q But such telephone conferences aren't reflected on  
23 the face of this bill, are they?

24 A No, no. I'm sure he kept Mr. Gardner informed.

25 Q Do you have any understanding as to what type of a

1 document the Middle Township registration statement -- I  
2 suppose it would be Middle Township was the locality. Do you  
3 have any understanding as to what type of registration  
4 statement was filed here?

5 A Cable TV.

6 Q Do you have any understanding as to the, the size of  
7 that type of filing? Is it an extensive filing or is it a --

8 A Not at all, routine.

9 Q -- short filing?

10 A Routine.

11 Q Do you know where such statements are filed? Are  
12 they filed --

13 A At the Commission.

14 Q -- at the Commission or are they filed --

15 A Registration statements are filed at the Commission.

16 Q I'd refer you to your invoice of June 4, 1990 which  
17 -- I guess I actually -- I'd like you to refer to the time  
18 records that were associated with that invoice that are in --  
19 found in TBF Exhibit 292 and those were time records on pages  
20 -- let us focus specifically on the time record on page 9. My  
21 question to you, do you have a specific recollection as we sit  
22 here today of discussing this time record with Mr. Cohen?

23 A Well, I discussed this bill with Mr. Cohen and I had  
24 this time. This was Mr. Schauble's time records and I knew  
25 that Mr. Schauble and Mr. Cohen had worked on the compliance

1 program and I said well, I've got this. I said, "Is the the  
2 rest of the time on here yours?" and he said, "Yeah. I spent  
3 a lot of time working with John on establishing what went in  
4 and the form and the procedures of the compliance program."

5 Q So you showed him this record and you asked him that  
6 question?

7 A Yes, I believe I did

8 Q And he confirmed to you that this -- that the work  
9 performed in this document was related to the construction and  
10 operation of the low power television stations?

11 A Yes.

12 MR. HOLT: No further questions, Your Honor.

13 JUDGE CHACHKIN: You're excused. Thank you.

14 WITNESS: Do you want me to leave any of these  
15 documents here or --

16 MR. HOLT: I'll sort them out.

17 WITNESS: Oh, okay.

18 (Whereupon, the witness was excused.)

19 MR. BECHTEL: We have another witness ready to bring  
20 in.

21 JUDGE CHACHKIN: Well, not today. We'll start  
22 tomorrow at 9:00 a.m. How's that? All right? 9:00 a.m.  
23 tomorrow we're going to begin. We're going to recess now  
24 until 9:00 a.m.

25 (Whereupon, the hearing was recessed at 3:47 p.m.).

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN THE MATTER OF TRINITY BROADCASTING OF FLORIDA, INC.  
**Name** AND GLENDALE BROADCASTING COMPANY

MM DOCKET NO. 93-75  
**Docket No.**

WASHINGTON, D.C.  
**Place**

MAY 3, 1994  
**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 5370 through 5557, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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**Date**

Cheryl L. Phipps  
Cheryl L. Phipps, Transcriber  
Free State Reporting, Inc.

May 13, 1994  
**Date**

Diane S. Windell  
Diane S. Windell, Proofreader  
Free State Reporting, Inc.

May 13, 1994  
**Date**

Marykae Fleishman  
Marykae Fleishman, Reporter  
Free State Reporting, Inc.

**FREE STATE REPORTING, INC.**

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